

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

**U.S. Bank Trust, N.A., as Trustee for
LSRMF MH Master Participation Trust II**

Plaintiff

vs.

Robert L. Morin and Linda A. Morin

Defendants

Midland Funding LLC

Party-In-Interest

CIVIL ACTION NO: 2:21-cv-00175-JAW

**RESPONSE TO DEFENDANT'S
MOTION FOR REFERRAL TO
FORECLOSURE DIVERSION PROGRAM**

**RE:
7 Lane Road, Greene, ME 04236**

**Mortgage:
December 10, 2005
Book 6609, Page 311**

NOW COMES the Plaintiff in this matter, U.S. Bank Trust, N.A., as Trustee for LSRMF MH Master Participation Trust II, and hereby responds in opposition to Defendant's Motion for Referral to state court for the Foreclosure Diversion Program filed on August 3, 2021, at ECF Document No. 6. It is Plaintiff's position that the matter should be referred for a Judicial Settlement Conference before ruling on the Defendant's motion to refer the matter to State Court. The State Court program has been on hold for over a year due to the pandemic and the inability to conduct the in-person mediations in state courts. To date, upon information and belief, despite the restrictions being lifted, mediations are still stalled, and a reference could mean the matter would be delayed indefinitely.

Local Rule 83.11 is clearly applicable and certainly satisfies any mediation contemplated under Maine law. The Plaintiff requests that before the Motion to Refer the matter to the State Diversion Program be stayed or denied without prejudice and that the Court refer the parties to Federal Mediation pursuant to Local Rule 83.11.

Further, it is Plaintiff's position that as a matter of law, reference to the state mediation program is not appropriate and completion or waiver of the state program is not an prerequisite to a judgment of foreclosure and sale in this Court.

The use of the state so-called "foreclosure diversion program" in the context of a federal foreclosure matter was addressed by Judge Hornby in *Residential Mortgage v. Lloyd*, 15-CV-00466-DBH. In *Lloyd*, the issue was fully briefed and Judge Hornby considered voluminous affidavits including those of Laure Pearlman, Sharon Anglin Treat, Chet Randall, Esq., and Peter Hatem, Esq. Following the review of these affidavits, Judge Hornby concluded state diversion is not required in a foreclosure brought in federal court.

Further, upon information and belief, the state program utilizes out of date documentation such as a "net present value" analysis, which is no longer utilized in any federal program (such as HAMP) and has incorrect or misleading assumptions which have not been updated in years. Further, the state program is authorized under the Maine Rules of Civil Procedure and therefore should not be imposed in this federal proceeding. *See, Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938).

Referring the matter for a Judicial Settlement Conference addresses the Defendant's desire to mediate his claim without undue hardship created by the delay in resumption of the mediation program. If the parties are not successful in resolving this dispute in a Judicial Settlement Conference, then the motion could be heard and determined or re-filed if denied without prejudice.

DATED: August 24, 2021

/s/Reneau J. Longoria, Esq.
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CERTIFICATE OF SERVICE

I, Reneau J. Longoria, Esq., hereby certify that on this 24th day of August, 2021, I served a copy of the above document by electronic notification using the CM/ECF system and/or First Class Mail to the following:

/s/ Reneau J. Longoria, Esq.
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